

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ELC NO. 37 [E033] OF 2021**

**TOM ANDALA MASINJILA**

*(Suing as the Legal Representative of the Estate of*

**JOSHUA ANDALA MASINJILA (Deceased)-----**

**1<sup>ST</sup> PLAINTIFF**

**TRUSTEES OF THE CATHOLIC DIOCESE OF KITALE-----**

**2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**SOLMAT ENTERPRISES-----**

**1<sup>ST</sup> DEFENDANT**

**ISAAC MACHARIA-----**

**2<sup>ND</sup> DEFENDANT**

**COUNTY LAND TREGISTRAR**

**TRANS NZOIA COUNTY-----3<sup>RD</sup>**

**DEFENDANT**

**JUDGMENT**

1. Before the court is an amended plaint dated **3/7/2024**, in which the 1<sup>st</sup> plaintiff, suing on behalf of the estate of his father Joshua Andala Masinjila (deceased) and the Trustees of the Catholic Diocese of Kitale, have sued the 3<sup>rd</sup> defendant for fraudulent and collusion in converting L.R. No. **Kitale**

**Municipality 2116/250**, issuing and registering a certificate of lease for **Kitale Municipality Block 3/333**, for the suit land to the 1<sup>st</sup> defendant, who subsequently transferred the same to the 2<sup>nd</sup> defendant, who has allegedly purported to take possession of the land claiming to be his.

2. The plaintiffs pray for:

(a) **Declaration that L.R. No. Kitale Municipality 2116/250 measuring 0.0465 Ha or thereabout remains his property, thus, an injunction should issue restraining the defendants, their agents, servants, or employees, or any other person claiming through them, from entering into the suit land or interfering with his quiet enjoyment and use.**

(b) **Declaration that the certificate of lease No. Kitale Municipality Block 3/333, issued in the name of the 2<sup>nd</sup> defendant, was illegally and fraudulently acquired, and the same should be cancelled.**

3. Though the 1<sup>st</sup> defendant was duly served with summons, it did not enter an appearance or participate in this suit.

4. The 2<sup>nd</sup> defendant opposed the suit through a statement of defence dated **2/8/2021**. He denied that the deceased was the registered owner of **Kitale Municipality 2116/250**, as alleged or at all.

The 2<sup>nd</sup> defendant averred that if there was any fraud committed as alleged, it was the 1<sup>st</sup> plaintiff who obtained the so-called Registration of Titles Act title deed fraudulently, and that the 1<sup>st</sup> defendant, being the first registered owner, the 2<sup>nd</sup> defendant's title is indefeasible. The 2<sup>nd</sup> defendant denied that any demand letter was issued as alleged or at all.

5. The 3<sup>rd</sup> defendant opposed the suit through an amended statement of defence dated **7/4/2025**. It denied the contents of the plaint at paragraphs **6** and **7** as the suit parcel of land was still registered under the Registration of Titles Act, now repealed, and has never been converted to the Registered Land Act (now repealed). The 3<sup>rd</sup> defendant averred that it makes no comment that the 2<sup>nd</sup> defendant holds a certificate of lease over the suit property.
6. The 3<sup>rd</sup> defendant denied the allegation that the 1<sup>st</sup> plaintiff wrote a demand letter dated **26/4/2021**, seeking to have an investigation over the authenticity of the certificate of lease held by the 2<sup>nd</sup> defendants, otherwise, it lacks powers to investigate on alleged forgery of a document for the said function falls under the Directorate of Criminal Investigations forensic department, which ascertains

the originality, authenticity or the legality of such documents.

- 7.** Further, the 3<sup>rd</sup> defendant averred that it lacks the capacity and expertise to investigate and or detect fraudulent documents presented to it for registration, save for its limited statutory duties to issue titles, transfer proprietary interests as presented at the registry, peruse and scrutinize the same, correct entries fraudulently made on record, establish boundaries, draw and maintain records for maps and plans and lastly, to place beacons on boundaries.
- 8.** The 3<sup>rd</sup> defendant denied the allegations of fraud and collusion on its part, generally and in particular. It averred that if any transaction occurred, it was due to misrepresentation of facts and fraud on the part of the 1<sup>st</sup> and 2<sup>nd</sup> defendants, misleading it into effecting the said transaction unknowingly, and therefore claims indemnity from the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
- 9.** The 3<sup>rd</sup> defendant specifically raised fraud on the part of the 1<sup>st</sup> and 2<sup>nd</sup> defendants for presenting forged documents to its officers, misrepresenting facts to it, and deliberately concealing material facts from it.
- 10.** The 3<sup>rd</sup> defendant averred that no demand or notice of intention to sue was made to it pursuant to

**Section 13A** of the Government Proceedings Act. The 3<sup>rd</sup> defendant averred that, if a certificate of lease exists, which is denied, then the same was issued in utmost honesty and good faith.

- 11.** At the hearing, **John Andala Masinjila** testified as **PW1**. He relied on a witness statement dated **21/6/2021** as his evidence-in-chief. PW1 told the court that he was the administrator of the estate of his late father, Joshua Andala Masinjila (deceased), who was the registered owner of L.R. No. **Kitale Municipality 2116/250**, located within Kitale Municipality, in Trans Nzoia County, is still registered under the Registration of Title Act (repealed) and has yet to be converted to the Registered Land Act (repealed).
- 12.** PW1 told the court that in **April 2021**, he discovered that the 2<sup>nd</sup> defendant was claiming the subject land as belonging to him, based on a certificate of lease L.R. No. **Kitale Municipality Block 3/333**, following an alleged conversion.
- 13.** PW1 told the court that out of the said revelation, his lawyer on record wrote a letter dated **26/4/2021** requesting the 3<sup>rd</sup> defendant to investigate the authenticity of the 2<sup>nd</sup> defendant's title documents,

for his father remains the only registered owner of the suit land.

- 14.** PW1 said that the 3<sup>rd</sup> defendant did not respond to his demand letter, and upon follow-up by his advocate, he was told that since the matter was in court, the Land Registrar could not comment on the same. PW1 told the court that he still holds the original grant, and the 3<sup>rd</sup> defendant was unable to explain how it issued a lease for L.R. No. **Kitale Municipality Block 3/333** to the 1<sup>st</sup> defendant, and subsequently to the 2<sup>nd</sup> defendant, without the original grant being surrendered to the Land Registrar, which is a clear case of glaring fraud on the part of the defendant.
- 15.** Further, PW1 said that he has been in possession and control of the suit land, though he had yet to develop it, save for a temporary lease of the open ground to business people. PW1 produced as exhibits, copies of the original grant dated **14/8/1974**, an official search certificate, a copy of the lease dated **8/8/2019**, a letter dated **6/4/2021**, to the 3<sup>rd</sup> defendant, letters of administration issued on **21/6/2021**, a copy of the certificate of incorporation of the 1<sup>st</sup> defendant dated

**14/7/2015**, and a letter dated **31/1/2021** as **P. Exhibits No. (1) - (7)** respectively.

- 16.** PW1 told the court that his late father passed on in **2018**. Though his late father held a certificate of lease for the suit land since **1974**, he was not personally utilising the suit land, though he had taken possession since it was allocated to him. PW1 said that his late father had not erected any developments or put the suit land under any business. PW1 denied that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have been utilising the suit land since **1974**. PW1 said that the certificate of lease was issued to the 2<sup>nd</sup> defendant.
- 17.** Further, PW1 said that he was not aware of the alleged conversion of the suit land and issuance of a certificate of lease to the 1<sup>st</sup> and 2<sup>nd</sup> defendants, who are unable to explain how the land was converted by the 3<sup>rd</sup> defendant, without a notification to him and the surrender of the original grant, before any new title to the suit land could be issued.
- 18.** PW1 said that it was not possible to convert the title and issue a certificate of lease before the original grant for the same under his custody was surrendered. PW1 blamed the 3<sup>rd</sup> defendant for

orchestrating and perpetuating the fraud. PW1 said that his late father had been paying land rates for the suit land.

- 19. Isaac Macharia** testified as **DW1**. He relied on an undated witness statement filed on **17/12/2021** as his evidence-in-chief. He told the court that he inherited the suit land from his late parents, who had acquired the suit land from the 1<sup>st</sup> defendant. DW1 told the court that transfer documents were prepared in his favour and effected on **8/8/2019**. He termed the suit land as family property.
- 20.** DW1 relied on copies of a certificate of lease, an official search certificate dated **21/3/2019**, a rent clearance certificate issued on **1/3/2017**, a Kenya Gazette notice dated **24/4/2015**, and a copy of the map as **D. Exhibits No. (1) - (5)**, respectively. DW1 said that he was transferred the suit land by the 1<sup>st</sup> defendant in exchange for another property.
- 21.** Further, DW1 said that the suit land was initially owned by his close relatives, among them Duncan Mathenge, who owned a business firm. DW1 said that the company became the owner of the suit land sometime in **2004**, before transferring the land to him. Again, DW1 said that before he became the

registered owner, he was not aware whether the plaintiff was initially the first grantee. DW1 said that there was no need for succession proceedings, since his late parents were never the owners of the suit land in the first instance.

- 22. DW2 was Nganga Waweru.** He relied on a witness statement dated **17/12/2021** as his evidence-in-chief. His testimony was that he has operated a welding business along Laini Moja, Kitale Town, for the last **20** years, on premises neighbouring the suit land.
- 23.** According to DW2, the 1<sup>st</sup> defendant was the owner of the suit land, which he had leased out to the 2<sup>nd</sup> defendant temporarily. DW2 said that the suit land was initially an open space until recently, when a container was erected thereon. DW2 termed the suit land as belonging to the family of the 2<sup>nd</sup> defendant.
- 24.** The plaintiff submitted that from the pleadings and the evidence tendered, it was clear that title No. **Kitale Municipality Block 3/333** was flagged for possible fraud, since **P. Exhibit No. (1)** was yet to be converted into the Registered Land Act (repealed) in accordance with the law. The plaintiff urged the court to grant the reliefs sought.

25. On the other hand, the 2<sup>nd</sup> defendant submitted that the allegations of fraud or claim were not substantiated to the required standards. The 2<sup>nd</sup> defendant submitted that, as per the land records, there was no evidence of conversion based on the Director of Surveys.
26. In a rejoinder, learned counsel for the plaintiff urged the court to hold and find that there can be no two title deeds in respect of the same piece of land.
27. The issues calling for my determination are:
- (1) If the 1<sup>st</sup> plaintiff holds a better title than the 2<sup>nd</sup> defendant.**
  - (2) If the 2<sup>nd</sup> defendant was a bona fide registered owner of the suit land.**
  - (3) If the plaintiffs have proved illegality or fraud upon the defendants.**
  - (4) If the 2<sup>nd</sup> defendant's certificate of lease is infeasible.**
  - (5) What is the order as to costs?**
28. What the court is faced with is two title documents in respect of the same land. The 1<sup>st</sup> plaintiff pleaded and testified that his late father was issued a

certificate of grant for L.R. No. **Kitale Municipality 2116/250**, located within Kitale Municipality in **1974**, now claimed by the 2<sup>nd</sup> defendant, as based on a certificate of lease issued in **2019**, as L.R. No. **Kitale Municipality Block 3/333**, which is said to have been created after an alleged conversion of his land from the repealed Registration of Title Act to the Registered Land Act (repealed) by the 3<sup>rd</sup> defendant.

**29.** The plaintiffs maintain that no conversion of the suit land ever took place. On the other hand, the 3<sup>rd</sup> defendant disowns the alleged conversion or knowledge of the certificate of lease held by the 1<sup>st</sup> and 2<sup>nd</sup> defendants. There cannot be two parallel titles over the same property. Any allocation without alienating, surveying, and hiving off a portion of an already alienated land amounts to illegal acquisition, going by **Attorney General -vs- Torino Enterprises Ltd [2022] KECA 78.**

**30.** In **Torino Enterprises Ltd -vs- Attorney General & another Petition No. 5 [E006] of 2022**, the court observed that the protection of title under **Article 40(6)** of the Constitution on the right to property does not extend to property that has been found to have been illegally acquired.

- 31.** In ***Munyu Maina -vs- Hiram Gathiha Maina [2013] eKLR***, the court said that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership, and when the instrument of title is under challenge, the registered owner has to go beyond the instrument, and prove the legality of how he acquired the title, and show that the acquisition was formal and free of any encumbrances including all interests which need not be noted in the register.
- 32.** In ***Funzi Island Development Ltd & Others -vs- County Council of Kwale [2014] eKLR***, the court said that a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper, and regular. Further, the court said that a court of law cannot, based on indefeasibility of title, sanction an illegality or give its seal of approval to an illegally or irregularly obtained title.
- 33.** In ***Wandaka & 2 Others -vs- Mwangi Civil Appeal No. 36 of 2019 [2025] KECA 83 [KLR] (24<sup>th</sup> January 2025) (Judgment)***, the court said that every case stands or falls on the evidence that is adduced at the hearing, to support the cause of action as pleaded.

34. In **Hubert L. Martin & Others -vs- Margaret J. Kamar & Others [2016] eKLR**, it was observed that when a court is faced with a case of two or more titles over the same land, it has to make an investigation so that it can discover which of the two titles should be upheld. The court said that the investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand.
35. The court said that a title that conformed to the procedure and can properly trace its root without a break in the chain will be upheld. The court said that each of the two or so parties must show that their title has a good foundation and is properly possessed by the current holder.
36. In **Samuel Kamere -vs- Land Registrar Kajiado, Nairobi COA No. 28 of 2005**, the court while dealing with two compelling claims over the suit property said that to be considered *bona fide* purchaser for value, the appellant had to prove that he had a valid and legal title, carried due diligence to determine the lawful owner from whom he acquired a legitimate title and thirdly, that he paid valuable consideration to purchase the land.

37. In **Benja Properties Ltd -vs- Syedna Mohamed B. Sahed & Others [2015] eKLR**, the court cited **Wreck Motors Enterprises -vs- Commissioner of Lands, C. A No. 71 of 1997** and **Faraj Maharus -vs- J. B. Martin Glass Industries & Others Civil Appeal No. 130 Of 2003 [2005] 2 KLR 289**, that the first in time prevails, such that if there is a mistake to issue two titles, in respect of the same land, if both are issued regularly, and procedurally without fraud, save for the mistake, the first in time prevails, because without cancellation of the original title, it retains its sanctity.
38. In **Sehmi & Another -vs- Tarabana Co. Ltd & Others Petition No. E033 of 2023 [2025] KESC 21 [KLR] (11<sup>th</sup> April 2025) (Judgment)**, the court said that the element of innocence means a purchaser acts in good faith, his conduct must not raise a doubt, that he did not have notice, or knowledge of a rival interest in existence in the land, he conducted due diligence as expected of a reasonable purchaser over the status of the land he sought to acquire, he paid consideration in money or money's worth, and that the purchase was in respect to a legal estate. The court said that equity follows

the law and that the doctrine of an innocent purchaser for value without notice did not protect a purchaser of an illegally or irregularly allocated title to public land.

- 39.** Applying the foregoing case law to the instant suit, it is not disputed that the 1<sup>st</sup> plaintiff's certificate of grant was regularly and procedurally issued on **20/10/1974**, based on deed plan No. **95406** under the Registration of Titles Act (repealed). The certificate of lease held by the 2<sup>nd</sup> defendant was issued on **8/8/2019** as title No. **Kitale Municipality Block 3/333**, for a period of **99** years with effect from **1/8/1973**. It is issued under the Land Registration Act.
- 40.** The 2<sup>nd</sup> defendant, in paragraph **5** of the statement of defence, blames the 1<sup>st</sup> plaintiff for fraud and terms his title as defeasible. The 2<sup>nd</sup> defendant has not pleaded the processes the 1<sup>st</sup> defendant went through in acquiring the title before transferring it to him.
- 41.** The 2<sup>nd</sup> defendant relied on a Gazette Notice No. **2693** dated **24/4/2015** as **D. Exhibit No. (4)**. It refers to the issuance of a new title to the 1<sup>st</sup>

defendant after an alleged loss of the initial title, under the Land Registration Act **2012**.

**42.** The Land Registration (Registration of Units) Order **2017** operationalized nationwide conversion from the Registration of Titles Act, Registered Land Act, and Government Land Act, all repealed regimes, to the Land Registration Act, **2016**. It provides that the original title must be surrendered, and conversion of the said suit land be done through a gazette notice publishing affected parcels, public notice, verification of ownership, return of old titles, and the signing of the prescribed forms.

**43. Section 8** of the Order provides that on migration of registers and titles, with effect from the date of transactions or dealings in the registry, pursuant to paragraph **4(5)**, all dealings in any land or interest in land within the registration unit shall forthwith be carried out at the registry.

**44. Section 9** thereof provides that the Registrar shall publish in at least two newspapers of nationwide circulation and announce on radio stations of nationwide coverage, a notice notifying the registered owners to make application for replacement of title documents issued from the

closed registers under **Section 8(2), (3), (4), and (5)** of the Order.

**45. Sub-Rule (2)** provides that the registered owners of parcels within a registration unit shall make an application to the Registrar in Form No. **LRA 97**, set out in the 2<sup>nd</sup> Schedule, for the replacement of the title issued from the closed registers.

**46. Sub-Rule (3)** provides that the application made under sub-paragraph **(2)** shall be accompanied by the original title and copies of the owner's identification documents.

**47. Sub-Rule (4)** provides that on any subsequent dealing or transactions, over a parcel within a registration unit, whose owner has not complied with sub-paragraph **(2)** above, the Registrar shall replace its title documents issued from the closed registers.

**48. Sub-Rule (5)** provides that on the replacement of title documents issued from the closed register, the Registrar shall cancel the former title documents and retain them for safe custody.

**49. Section 43** of the Land Registration (General) Regulation **2017** provides that:

*(a) A proprietor may apply to the Registrar for combination or subdivision under Section 22(1) and (2) of the Act in Form KRA 26 set out in the*

*Sixth Schedule, through an application supported by a copy of an approval of development application from the relevant County Government for subdivision or combination, a copy of the registered mutation form in Form LRA 27, a cadastral map for the subdivision or combination.*

- 50.** From the foregoing, it is clear that a surrender must be effected in prescribed form (**LRA 97**) or an equivalent instrument, executed by the proprietor, lodged with the Land Registrar, entered in the register, and acknowledged by the Registrar by cancelling the old title. A surrender cannot occur by a letter, request, or intention. Courts have held that a surrender is a formal, registered act and not an informal communication. See **Fanikiwa Limited & 3 others -vs- Sirikwa Squatters Group & 17 others [2025] KESC 79 (KLR).**
- 51.** The plaintiffs have pleaded and testified that they never participated in any conversion, have remained in constructive possession of the parcel since **1974**, and have never been notified of or authorised any request for surrender or need for cancellation of the old title, which PW1 still holds the original now produced before the court.

- 52.** The Gazette Notice produced by the 2<sup>nd</sup> defendant is not an advertisement of an intended surrender of the old title and for a conversion of the same from the Registration of Titles Act repealed to the Land Registration Act. It does not in any way refer to **Kitale Municipality 2116/250**. It does not refer to notifying the owner of **Kitale Municipality 2116/250** of the intended conversion of his land under the Land Registration Act. It does not call for an application for the surrender and conversion of title No. **Kitale Municipality 2116/250**.
- 53.** There is no evidence that the 1<sup>st</sup> plaintiff was notified of the same through means set out in the above cited law. Issuance of provisional or new titles alleged to be lost is not the issuance of a title for conversion under **Section 44** of the Registration of Titles Act, repealed, and **Section 63** of the Registered Land Act (repealed). There is no evidence before the court that **D. Exhibit No. (4)** was issued, the 1<sup>st</sup> and 2<sup>nd</sup> defendants were the true owners of **Kitale Municipality 2116/250**, to be said to have been absolute proprietors, who purported to have sought a surrender and conversion of the suit land to **Kitale Municipality Block 3/333**.

- 54.** Documents envisaged as Form No. **LRA 97**, duly executed by the 1<sup>st</sup> plaintiff, surrendered and registered against the title register, are not before the court. The alleged gazettelement of lost title under the Land Registration Act by the 1<sup>st</sup> defendant did not in any way amount to the surrender of title No. **Kitale Municipality 2116/250**. The said gazettelement does not and cannot legally surrender a title under **Section 44** of the Registration of Titles Act (repealed), and or bind the registered proprietor or estate. The same are void under **Sections 79** and **80** of the Land Registration Act.
- 55.** The question is whether **Kitale Municipality 2116/250** was legally converted to **Kitale Municipality Block 3/333**. Conversion of titles from one legal regime to another, and especially the Registration of Titles Act, Registered Land Act, and Government Land Act (all repealed), is governed by **Sections 6, 7, and 9** of the Land Registration Act.
- 56. Section 6** of the Land Registration Act establishes registration units and mandates that land registration must be done within gazetted registration units, which shall be divided into registration sections, identified by distinctive names, which may be further

divided into blocks with distinctive numbers, letters, or a combination of numbers and letters.

- 57.** The law requires that the parcels of each registration section or block be numbered consecutively. The power to determine or cause registration, sections, or blocks to be combined, subdivided, or their boundaries to be varied is vested in the Land Survey Department. The Lands Cabinet Secretary has to publish in the gazette the included conversion areas.
- 58. Section 7** of the Land Registration Act requires gazettelement of registration units, including public notification, before any change in regime or registration status. **Sections 14** and **15** of the Land Adjudication Act require the recording of the register during demarcation.
- 59.** In **Livingstone Kunini Ntutu -vs- Minister for Land & Others [2012] KEHC 1171 (KLR)**, the court said that a person affected by cancellation or amendment of title under the law is to be given a fair hearing before the same is undertaken under **Articles 40, 47,** and **50** of the Constitution. Any conversion contrary to **Section 9** of the Land Registration Act is unconstitutional and illegal, since

administrative action affecting land must meet the constitutional threshold.

- 60.** There is no evidence that the 1<sup>st</sup> plaintiff or his late father was notified of the intended gazettelement of a purportedly lost title for the suit land, gazettelement of the title as lost, which notice required the registered proprietor, to surrender of the original title, and compliance with prescribed procedures to make the alleged conversion valid and the issuance of title to the 1<sup>st</sup> defendant and subsequently to the 2<sup>nd</sup> defendant by the 3<sup>rd</sup> defendant.
- 61.** In **Arthi Highway Developers Ltd -vs- West End Butchery Ltd [2015] eKLR**, the court said that a forged document confers no title, and the doctrine of indefeasibility of title does not protect fraud. Title based on forged documents or a purported misrepresentation that the original title to the suit land was lost shows that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants acted outside their statutory mandate and breached **Section 14** of the Land Registration Act and **Article 40** of the Constitution.
- 62.** The original title produced by the 2<sup>nd</sup> defendant is signed by Mr. Odhiambo, Land Registrar, Code No. **286**, Kitale. So, the 3<sup>rd</sup> defendant cannot feign

ignorance of the issuance of the certificate of lease. Non-compliance with the law on conversion cannot be said that the 3<sup>rd</sup> defendant acted in good faith or was misled by the 1<sup>st</sup> and 2<sup>nd</sup> defendants to issue a certificate of lease on Land Registration Act for land falling within the Registration of Title Act (repealed).

- 63.** Equity cannot sanitise fraud, trespass, or invasion of private property. The 2<sup>nd</sup> defendant cannot use trespass and ask the court to convert trespass into ownership. Under **Sections 24, 25, and 26** of the Land Registration Act, a title issued through misrepresentation of facts, or through illegality, or irregularity cannot enjoy the doctrine of indefeasibility of title.
- 64. Section 80** of the Land Registration Act empowers this court to rectify the register where titles have been obtained through fraud or mistake. In ***Arthi Highway Developers -vs- West End*** (*supra*), the court said that fraud vitiates everything and cannot attract equitable relief. Ownership of land is determined by lawful registration. If a document of title was not acquired through the proper process, the title itself cannot be said to be a good title.

- 65.** In **Kiptugen -vs- Commissioner of Lands & 6 others [2025] KEELC 8277 (KLR)**, the court said that if it were not the position, then all one could need to do is to manufacture a lease or title at a backyard or the corner of a dingy street and by virtue thereof claim to be the absolute proprietor.
- 66.** In **Frank Logistics Ltd vs Golden Lion Real Estate Co. & Others, Civil Appeal No. E313 of 2024**, both parties were claiming the same physical property despite differing land reference numbers. The court upheld Golden Lion's root of title, supported by the **2014** conveyance and **2015** search certificate. The appellant's title was deemed unprocedural and illegal under **Section 26(1)** of the Land Registration Act, for lack of evidence of conversion from the Government Land Act, to the Registration of Titles Act, terming the same as procedural irregularities sufficient for cancellation.
- 67.** In this suit, the 1<sup>st</sup> and 2<sup>nd</sup> defendants had an obligation to prove the legality of title acquisition over and beyond presenting a certificate of lease as held in **Dina Management Ltd -vs- County Government of Mombasa & Others [2023] KESC 30 [KLR]**, as rooted in irregularities are not

indefeasible; due diligence obligated the 2<sup>nd</sup> defendant to trace the history to the original title. They ought to have verified the regularity of the conversion. Failure to do so risks impeachment of the resultant title. Courts require evidence of irregularities. Once the plaintiff raised the irregularity in the conversion and lack of notification, gazettelement, and the surrender of the original title, the evidentiary burden shifted to the 1<sup>st</sup> and 2<sup>nd</sup> defendants to prove lawful acquisition, since **Article 40(6)** of the Constitution excludes protection for unlawfully acquired property.

**68.** The 1<sup>st</sup> and 2<sup>nd</sup> defendants had the obligation to confirm compliance with **Sections 6, 7, 8, 8,** and **14** of the Land Registration Act on conversion of the Registration of Titles Act to the Land Registration Act. The documents used by the 1<sup>st</sup> and 2<sup>nd</sup> defendants to obtain title cannot withstand judicial scrutiny in view of the holding in ***Fanikiwa -vs- Sirikwa*** (*supra*), on conversion from the Registration of Titles Act to the Land Registration Act.

**69.** As held in ***Kemboi -vs- Macharia & Others Civil Appeal No. 17 of 2020 [2025] KECA 1665 [KLR] (21<sup>st</sup> October 2025) (Judgment)***, a certificate of

title or lease cannot cure unlawful registration. The manner in which the certificate of lease was issued to the 1<sup>st</sup> and 2<sup>nd</sup> defendants is fraught with critical deficiencies. The processes leading to registration under the Land Registration Act for land falling under the Registration of Titles Act (repealed), or a purported lost original title, are not clear.

**70.** The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants are unable to answer a critical question on how a title deed for land initially falling under the Registration of Title Act (repealed) would be advertised and gazetted as lost, and subjected to a regime of the Land Registration Act without a formal conversion. It appears as the trend nowadays for fraudsters to purport to invoke the gazetting of a lost title through the office of the Chief Land Registrar to sanitise an otherwise illegal process.

**71.** The intention of **Section 33(1)** of the Land Registration Act on gazetting of lost or misplaced original documents requires the preservation of a copy of the lost title, original identification card, a statutory declaration, an official search, an application for title, a police abstract, passports, and publication in the gazette. It was intended to help

fraudsters salivating to obtain titles of innocent registered proprietors of land who, without knowledge or notice, would find much later that someone used the root to obtain a title to their land, yet they are still in possession of an original title deed.

- 72.** The 2<sup>nd</sup> defendant pleads innocence, yet he is a beneficiary of a transfer of the illegal title from the 1<sup>st</sup> defendant, who, through the Land Registrar, caused the gazettelement of a lost title to sanitise his illegal process. The principle in law is that one cannot give what they do not have in the first instance. The 1<sup>st</sup> defendant had no better title to offer to the 2<sup>nd</sup> defendant. Due diligence required the 2<sup>nd</sup> defendant to verify the rightful owner of the suit land.
- 73.** The 2<sup>nd</sup> defendant, other than the certificate of lease, has not told or availed before the court a litany of documents that the 1<sup>st</sup> defendant, owned by his relatives, went through in obtaining the title documents. There is nothing to show how the 1<sup>st</sup> defendant in the first instance became the owner of the land, or got registered in a title allegedly lost in order to seek its replacement through a gazettal of

its loss or misplacement by the office of the Chief Land Registrar.

- 74.** An affidavit of lost title is not coupled with a police abstract, for the loss is not among the documents the 2<sup>nd</sup> defendant obtained from the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant did not avail to the 2<sup>nd</sup> defendant the original manner of either allocation of the land or acquisition in whatever manner as the initial registered owner of the title.
- 75.** The 2<sup>nd</sup> defendant has not availed any Land Control Board consent and transfer duly signed or executed by the 1<sup>st</sup> defendant's directors and himself, which were duly lodged with the 3<sup>rd</sup> defendant to lead to an issuance of the certificate of title in **2019**. There is no evidence that the 2<sup>nd</sup> defendant paid any stamp duty and registration fees to obtain the certificate of lease. Consent to transfer the land obtained from the head lessor to the 1<sup>st</sup> and 2<sup>nd</sup> defendants in the transaction is missing.
- 76.** A title is an end product of a process, where the process of acquisition is tainted, whether through procedural irregularity, fraud, or illegality, then the resultant title is void. In **Macfoy -vs- United Africa Co. Ltd [1961] 3 ALL ER 1169**, the court said that

a nullity at inception remains a nullity, no matter how many hands the certificate of lease for the suit property passed, without conversion or valid acquisition, the transfer to the 2<sup>nd</sup> defendant from the 1<sup>st</sup> defendant was equivalent to putting nothing over nothing.

- 77.** To put a stop to the perpetuation of an illegality which was perpetuated by the Land Registrar without compliance with **Section 33(1), (2), and (4)** of the Land Registration Act. There is no evidence that the 3<sup>rd</sup> defendant, after the lapse of **60** days of the gazette, verified and confirmed that the above process was duly complied with, before issuing the certificate of lease. Evidence of the existence of a green card for the past transactions pertaining to the suit land, as having been a freehold and or a white card as a basis of the replacement, is missing.
- 78.** If the land did not fall under the Land Registration Act and had not been converted, one still wonders how the 3<sup>rd</sup> defendant cannot plead before this court that it was misled by the 1<sup>st</sup> and 2<sup>nd</sup> defendants to issue to them a certificate of lease. The back stopped with the 3<sup>rd</sup> defendant to per the law to verify and confirm if there was, in the first instance, any existing entry

of the records for **Kitale Municipality Block 3/333** in favour of the 1<sup>st</sup> defendant.

- 79. Section 31** of the Land Registration Act mandates the Land Registrar with the power to dispense with the production of an original certificate of title or lease during the registration of any dealings with the land, or lease to which it relates. **Section 86** of the Land Registration Act allows the court to review the exercise of the powers and the duties of the Land Registrar. Replacing a lost title is a legal and structured process. In this case, it was used to assist the 1<sup>st</sup> defendant in obtaining a title to the suit land, which lawfully and legally belongs to the plaintiff.
- 80.** The Land Registrar ought to have ensured that all the prerequisites of the law on both the reconstruction of a new register and conversion had been followed. A Land Registrar is statutorily obliged to maintain proper, credible, and verifiable records for the suit land. It cannot, therefore, come from the mouth of the 3<sup>rd</sup> defendant that it was misled, was not privy to the irregularity, and should seek indemnity from the 1<sup>st</sup> and the 2<sup>nd</sup> defendants when actually it is the 3<sup>rd</sup> defendant who facilitated the illegality by not complying with the law.

- 81. Section 7(5)** of the Land Registration Act provides that registration shall be affected by an entry in the register in such a form as prescribed in law. An existing green card for the title, which was held by the 1<sup>st</sup> defendant before gazettelement, was not produced by either the 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> defendants. It cannot be true that such a crucial document's even if the title got lost in the hand of the 1<sup>st</sup> defendant, vanished into thin air.
- 82.** There is no evidence that the 3<sup>rd</sup> defendant reconstructed the register for the new title issued as lost to the 1<sup>st</sup> defendant. The court finds that the 3<sup>rd</sup> defendant is liable for the irregularities. The court finds that the title held by the plaintiffs as issued in compliance with the law, unlike the one issued by the 3<sup>rd</sup> defendant, to the 1<sup>st</sup> and later the 2<sup>nd</sup> defendants, which suffers from both procedural irregularities and illegalities.
- 83.** The upshot is that this court finds that:
- a)The title L.R. No. Kitale Municipality 2116/250 held by the 1<sup>st</sup> plaintiff has not been cancelled or converted from the Registration of Titles Act (repealed) to the Land Registration Act regime.**

- b)The certificate of lease for L.R. No. Kitale Municipality Block 3/333 issued to the 1<sup>st</sup> and 2<sup>nd</sup> defendants by the 3<sup>rd</sup> defendant was and remains a nullity *ab initio*, and is hereby invalidated and cancelled.**
- c)A permanent injunction is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their agents, servants, or employees, or any other person claiming through them, from entering into or remaining on land title number L.R. No. Kitale Municipality 2116/250, or interfering with the 1<sup>st</sup> plaintiff's quiet enjoyment and use of the suit land.**
- d)The original title for L.R. No. Kitale Municipality Block 3/333, produced by the 2<sup>nd</sup> defendant before this court, be surrendered to the 3<sup>rd</sup> defendant by the Deputy Registrar for the formal cancellation.**
- e)The 2<sup>nd</sup> defendant to forthwith yield vacant possession of land title number L.R. No. Kitale Municipality 2116/250, to the 1<sup>st</sup> plaintiff.**

**f) Costs to the plaintiffs to be borne by the 2<sup>nd</sup> defendant.**

**84.** Orders accordingly.

**Judgment dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **18<sup>th</sup>** day of **February 2026**.

**In the presence of:**

Court Assistant - Dennis

Mr. Gemenet for the 2<sup>nd</sup> defendant - present

Mr. Kimani for the Plaintiffs -absent

Attorney General - absent



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**